

Joint Committee on Human Rights

Human Rights Ombudsperson – The Administrative Justice Council and JUSTICE’s response to the Call for Evidence

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Introduction

1. The Administrative Justice Council ('AJC') is the only body with oversight of the whole of the administrative justice system in the UK, advising government, including the devolved governments, and the judiciary on the development of that system.
2. This response does not reflect the views of all of the AJC's members, nor their organisations. Some of our members will submit their own individual responses to the inquiry. We have sought the views of ombudsperson representatives who sit on the AJC and Steering Group members.
3. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.

Should there be a Human Rights Ombudsperson? If so, what powers and resources would the ombudsperson need to address the challenges people face in enforcing their rights out of court?

4. We agree with the conclusion of the Joint Committee's report on *Human Rights Act Reform* that there should be consideration as to how to strengthen the enforcement of human rights other than by court action. We are also fully supportive of the recommendation that the Government look at '*ways to spread best practice in human rights compliance across the public sector including through training and information programmes*'¹. We also share the concerns raised, most notably by the Independent Human Rights Act Review ('IHRAR'), about the lack of civic education in this area and the lack of public awareness of human rights protections.²

¹ Joint Committee on Human Rights, '[Human Rights Act Reform: Thirteenth Report of Session 2021 – 2022](#)' (30 March 2022), p12

² IHRAR recommended that 'serious consideration' be given to 'developing an effective programme of civic and constitutional education in schools, universities, and adult education'. We agree with the Joint Committee that this should happen without delay.

5. However, whilst we understand the appeal of a Human Rights Ombudsperson in principle, we have misgivings about whether this is the best way to support human rights culture within ombudsperson services and to strengthen the enforcement of human rights outside formal legal processes. Our reasons for this are set out below.

Confusion to the public

6. There is already a multitude of different public service ombudspersons in the UK covering different areas, including the Parliamentary and Health Services Ombudsman, the Local Government and Social Care Ombudsman, the Housing Ombudsman and those that cover public services in the devolved authorities. We are concerned that for the lay complainant it is often already unclear which ombudsperson they should approach with their complaint; adding a Human Rights Ombudsperson is likely to exacerbate this.
7. There has been previous work aimed at reducing the number of ombudspersons in order to simplify the current system. In 2014, for example, Robert Gordon prepared a report for the government which argued for establishing a single Public Services Ombudsman for England (and non-devolved public services). The report set out the following argument for simplification given the complex nature of modern public service delivery; *'As I set out in my review of the LGO [Local Government Ombudsman], the proliferation of service delivery arrangements, the integration of previously discrete services, the partnering of delivery agents and the blurring of institutional boundaries are all innovations which increasingly call into question the traditional boundaries and jurisdictions of ombudsmen. The public should not have to make complex determinations about who is accountable for delivering a service and to whom they should turn to for redress if the service deliverer fails to address their complaint to their satisfaction'*.³
8. JUSTICE responded to the Government consultation on a single ombudsperson arguing for the creation of a single Public Services Ombudsman. This was on the basis that *'by the time individuals decide to complain to an ombudsman, they will already have exhausted internal complaints mechanisms...at present, they then face the further difficult task of choosing between multiple ombudsmen and external complaints schemes'*⁴. It is also the view of the AJC, that a single public services ombudsperson

³ Robert Gordon CB, ['Better to Serve the Public: Proposals to restructure, reform, renew and reinvigorate public services ombudsmen'](#) (October 2014), p12

⁴ JUSTICE, ['A Public Service Ombudsman – A Consultation: JUSTICE Response'](#), (June 2015), p5

would be a more efficient and user-friendly way of providing access to justice to complainants by having a stream-lined system for complaints in a similar way to the devolved nations. There have been similar suggestions for other ombudsperson schemes to join-up under a single ombudsperson, such as the Housing Ombudsman and the Property Ombudsman scheme, which together cover a vast range of housing issues.

9. We would be concerned that adding a further Human Rights Ombudsperson would only make the situation less clear for the complainant. A complainant would have to potentially decide whether to pursue their complaint at the specialist ombudsperson for the sector (for example, someone complaining about ill-treatment by their care provider could go the Local Government and Social Care Ombudsman) or the new Human Rights Ombudsperson (who could consider the human rights obligations which care providers have under the Human Rights Act (“**HRA**”)). Alternatively, they would be able to pursue their complaint at two different ombudspersons. In that situation, there would be a real risk of the ombudspersons themselves being unclear who was meant to be dealing with which issue of a complaint. For example, in the above example, the Local Government and Social Care Ombudsman may consider that it is not for them to consider any ‘human rights’ aspects since that is not their remit. This is likely to be unnecessarily bureaucratic, causing unnecessary confusion and potentially distress.

Undermines a human-rights based approach to existing ombudsperson services

10. There is also a risk that it would send a message to existing ombudsperson schemes that human rights issues should not be considered by them, since that is entirely the role of the separate Human Rights Ombudsperson. In our view, this risks undermining work that needs to be urgently prioritised; the embedding of a human rights culture within our existing ombudsperson bodies. We would call on the Joint Committee to focus on this under-discussed aspect of ombudsperson services.
11. The Equality and Human Rights Commission (“**EHRC**”) have produced guidance on how existing ombudsperson schemes can take a ‘human rights-based approach’ to the work that they do. This emphasises that ‘*human rights can be a powerful way to articulate both injustice and maladministration*’⁵. It also sets out the importance of establishing if human rights are relevant at an early stage, ensuring that public authorities have

⁵ The Equality and Human Rights Commission, [‘A human rights based approach: for ombudsman schemes’](#)

followed their human rights obligations and putting the complainant (the potential human rights victim) at the centre throughout, but especially when formulating a remedy.

12. Similarly, the Northern Ireland Public Services Ombudsman ('NIPSO') and Northern Ireland Human Rights Commission has published a Human Rights Manual to place human rights at the core of the work of NIPSO. This sets out that NIPSO is a public authority under s6 of the Human Rights Act 1998 and that, by using human rights as a benchmark, NIPSO is '*fulfilling its mandate under its governing legislation and domestic human rights law*'.⁶

13. The manual sets out the following to describe a human rights-based approach to the work of an ombudsperson;

'A human-rights based approach to the work of the NIPSO reflects the essence of an Ombudsman's historic and fundamental objective of humanizing bureaucracy and improving the experience of service users. This is because human rights are a universal set of values. As legal entitlements, they are predicated on the notion that in order to live in peace and dignity they are the minimum that States must guarantee to all within their borders. A lack of regard for human rights can be maladministration. Injustice is nowhere defined but can include loss of opportunity, inconvenience and distress. Equally, human rights can also be an effective way of expressing the injustice suffered by an individual, as a consequence of maladministration'.⁷

14. The Public Services Ombudsman for Wales also stresses that the ombudsman '*must consider whether the public authority has acted in a way which is incompatible with the rights set out in the HRA*' and that the ombudsman can consider if the public authority has not considered an individual's human rights obligations.⁸

15. Internationally, public services ombudsperson schemes double up as a human rights regulator, for example the Portuguese Ombudsman⁹ and the Austrian Ombudsman¹⁰, demonstrating the interconnectivity of human rights and the issues investigated by ombudsperson services.

⁶ Northern Ireland Public Services Ombudsman, '[Human Rights Manual](#)', p4

⁷ Northern Ireland Public Services Ombudsman, '[Human Rights Manual](#)', p4

⁸ <https://www.ombudsman.wales/fact-sheets/human-rights-act/>

⁹ Since 1999, the Portuguese Ombudsman has been acting as the National Human Rights Institution, see <https://ennhri.org/our-members/portugal/>

¹⁰ Since 2012, the Austrian Ombudsman Board '*assesses whether the administration is acting within the law and complies with human rights standards*' and is '*responsible for protecting and promoting compliance with human rights*', see <https://ennhri.org/our-members/austria/>

16. Further, through the Venice Commission, the Council of Europe¹¹ has emphasised that the protection of human rights should be a key role of all ombudspersons:

“Contributing to the dissemination of an administrative culture that encourages the protection of human rights is another key function of the Ombudsman. He [she] is well placed to identify situations in which the implementation of laws, at an individual level as well as at the level of the administration as a whole, is problematic in terms of human rights. In order to address these structural deficiencies, the Ombudsman can recommend changes in the administrative structures and staff’s behavior, as well as raising staff awareness.”¹²

17. The work on developing a human-rights based approach to ombudsperson services, particularly in England and non-devolved policy areas, is something which requires urgent attention and is something which we would recommend that the Joint Committee looks at as a priority. This would also have the benefit of building upon the work of some of the devolved ombudsperson services and ensuring that there was a more consistent approach to human rights casework throughout the UK. We are concerned that the creation of a Human Rights Ombudsperson would be an unwelcome distraction from this work.
18. We understand that the EHRC have previously engaged with ombudsperson schemes about taking a human rights approach to their work and we would welcome further collaboration to ensure this approach is embedded more fully into their work. Training, in particular, would help caseworkers to identify human rights issues at an early stage and have the knowledge of how to incorporate a human rights perspective to their investigations.

Conclusion

19. One of the central benefits of the Human Rights Act, through s.6 HRA, is that all public authorities are required to consider their human rights obligations and a human rights culture has developed (to varying extents) within public authorities. By ensuring that the existing ombudspersons take a human rights-based approach to complaints we believe

¹¹ The Venice Commission, whose official name is the Commission for Democracy through Law, has provided expertise in support of constitutional, legislative, or administrative reforms to ensure the progress of democracy, the protection of fundamental rights and the respect for the rule of law.
<https://www.coe.int/en/web/human-rights-rule-of-law/venice-commission>

¹² https://www.venice.coe.int/WebForms/pages/?p=02_Ombudsmen&lang=EN

this will help further embed a human rights culture within public authorities, as well as ensuring that complainants are properly protected.

20. We are concerned that the creation of a Human Rights Ombudsperson scheme risks sending a message that human rights considerations are something which should be considered separately, rather than ingrained in everything an organisation does. It also risks communicating to the public that human rights considerations are distinct from issues that affect their day-to-day life, such as the provision of social care, housing and healthcare. Our view is that it would be better to develop a human-rights based approach to casework within the existing ombudsperson services. There is much more to do to make this a practical reality but this would be a more efficient use of time and resources. We would welcome further collaboration with human rights bodies including the ECHR (in consultation with ombudsperson schemes), to ensure an effective, fair and transparent human rights-based approach is adopted by ombudspersons in all jurisdictions.

21. That all said and with an eye to the future, we are mindful that the proposed future vision - as described by the Master of the Rolls and being considered within the policy portfolio of Lord Bellamy at the Ministry of Justice - could create a greater opportunity for earlier resolution of justice-related issues. Along with advances in technology, this in turn could enable a more tailored approach to meet the needs of users and a stronger argument for more rather than less ombudspersons.

The Administrative Justice Council and JUSTICE

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